

REQUEST FOR QUALIFICATIONS

URBAN DESIGN SERVICES

NICOLLET MALL DESIGN COMPETITION

THE CITY OF MINNEAPOLIS, MINNESOTA

April 29, 2013

REVISED May 8, 2013: Clarification/Simplification of the Selection Process and Submission Requirements; Updated General Conditions that will apply to final Design Services Contract with winner of design competition.

INVITATION

The City of Minneapolis (City) in cooperation with the Minneapolis Downtown Council (MDC) is pleased to issue this Request for Qualifications (RFQ) for Urban Design Services from qualified firms or teams of firms capable of bringing a creative and multi-disciplinary approach to the redesign of Nicollet Mall in downtown Minneapolis.

BACKGROUND



Figure 1. Nicollet Avenue in 1874, 1906, and 1945.

1880 - 1967

Nicollet Avenue has been Minneapolis's prime shopping street since at least the 1880s. But like many other American cities, by the 1950s it was losing shoppers to the new suburban malls. In 1958 the City hired Barton-Aschman Associates to study transportation needs on Nicollet Mall. In 1960, pursuant to the provisions of Chapter 430, Minnesota Statutes, the City passed Minneapolis Code of Ordinances (MCO) 439 that declared Nicollet Avenue from Washington Avenue to 13th Street a pedestrian mall. This defined the use of the street and created the Nicollet Mall as a pedestrian and transit mall. It also defined the Nicollet Avenue Pedestrian Mall Improvement District for the purposes of funding annual improvement and maintenance

costs from benefited property owners. Four years later, in 1962, the city hired renowned landscape architect Lawrence Halprin to redesign Nicollet Mall as a pedestrian-oriented retail thoroughfare to be served by buses and taxis. Halprin's most important design contribution was the signature serpentine curve that ran the length of the mall but he also added fountains, landscaping, street furniture, lighting, public art, bus shelters, and electrically heated sidewalks. Design was complete in 1965 and the Nicollet Mall, stretching eight blocks from 5th Street at the North to 13th Street at the south, opened in 1967.¹ The Nicollet Mall Advisory Board was created pursuant to Minnesota Statute 430 to advise the City Council on operational and maintenance matters relative to the Mall, and the City's Public Works Department created the Nicollet Mall maintenance crew to manage general housekeeping and light maintenance activities on the Mall. City costs were recovered from the Improvement District via annual service charges similar to a special service district.

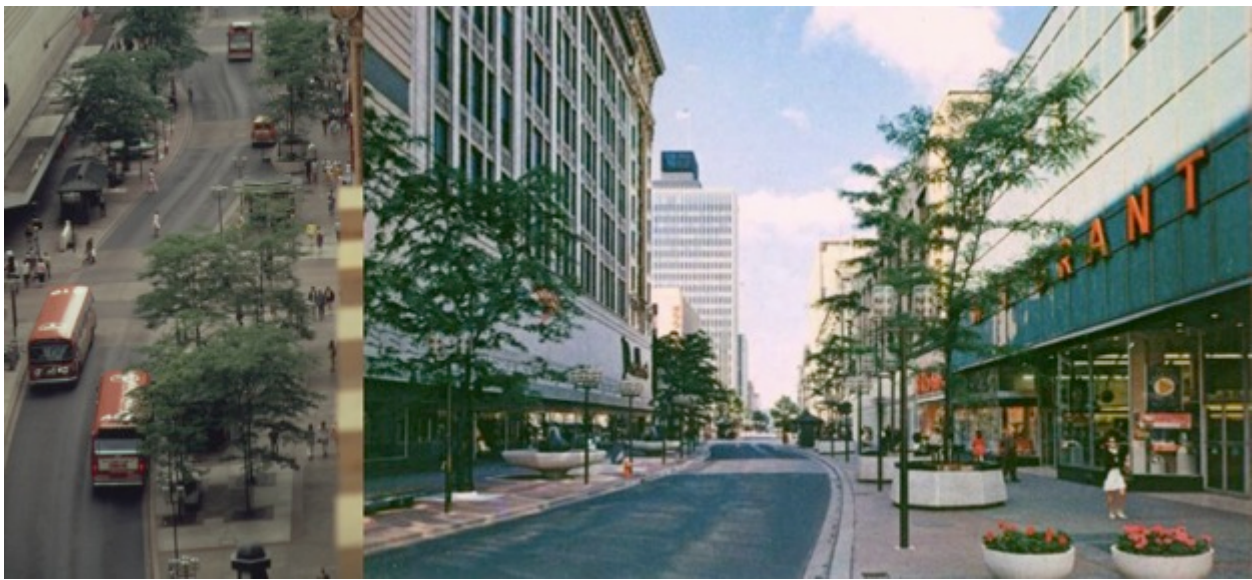


Figure 2. Halprin's Nicollet Mall, Circa 1970.

1967-1990

Twenty-five years after Halprin had completed his design, Nicollet Mall was showing signs of age. The sidewalk heating system had failed, the materials were showing signs of wear and tear, and the Mall had become dated in style, so in the mid 1980's a complete reconstruction project was initiated. The Nicollet Mall Implementation Board, comprised of stakeholders in the downtown business community, was created to advise the City Council regarding project needs, parameters, and design recommendations. The City commissioned the local firm of BRW Architects to complete the new design, which retained a gentler version of Halprin's serpentine curve and incorporated new materials, fountains, landscaping, street furniture, lighting, public art, and bus shelters. As a transit mall, complete snow removal was still necessary. It was decided at the time that it would be more cost effective to manage snow removal using standard labor

¹ See Larry Millet, *AIA Guide to the Twin Cities*, Saint Paul: Minnesota Historical Society, 2007, for the history of Nicollet Mall and many of the buildings that have been built on and near it over the past century.

methods than with a sidewalk heating system, so sidewalk heating was not included in the new design. The duties of the Public Works Nicollet Mall Crew were expanded beyond periodic snow removal to include full winter snow and ice control.

A special capital funding model and district was created to fund the \$22 million project that extended to 12th Street, but a more focused operations and maintenance district of abutting property owners was created to pay for all service charges related to the ongoing maintenance of the New Nicollet Mall and streetscape elements. In 1992 the Nicollet Mall Extension was created by ordinance to extend Nicollet Mall two blocks to the north and two blocks to the south, to include the twelve blocks between Washington Ave. to the north and Grant Street to the south.



Figure 3. Nicollet Mall Today.

1990 - 2013

It was apparent soon after opening that the New Nicollet Mall was not aging gracefully. Streetscape elements including bus shelters, planters, fountains, ornate pedestrian level light fixtures, and the granite paver system were showing signs of premature aging and outright failure. Because of design decisions, many repairs were extremely expensive and required significant retrofitting. The 1990 design was not a durable system and the property owners within the operations and maintenance district were faced with rapidly escalating costs for repairs or large backlogs of deferred maintenance, which resulted in what was often publically described as a shoddy appearance.

Until 2009, the Nicollet Mall Advisory Board (NMAB) had a major roll managing the day-to-day operations of the Nicollet Mall, in collaboration with City staff. The Nicollet Mall was not created as a Special Service District (SSD), but rather as a Pedestrian Mall, as defined by Minnesota Statute 430, although it operated much like an SSD, with the NMAB advising the City Council regarding annual budgets, service delivery and assessment methodology, and recovering all costs for services were through assessments of service charges to operations and maintenance district property owners. Like an SSD, the district charged only for services that were not normally performed by the city or that were performed at an enhanced level. In 2009, at the request of the downtown business community, the City created the Downtown Business Improvement Special Service District, commonly called the Downtown Improvement District or DID, under Minnesota Statute 428A, that encompassed most of downtown Minneapolis. The

NMAB advised the City Council that they would opt to have their operational roll and all service delivery be managed through the DID and management board, that their current operations and maintenance district would “go dormant,” and that they would no longer submit annual budgets and service requests. The enabling ordinance that defines the Nicollet Mall is still intact and could be reinitiated in the event the DID no longer existed. For many years a task force of City staff, previous NMAB representatives and DID management board members has been working to create a new vision for the future of the Nicollet Mall, address a major backlog of deferred maintenance, failed infrastructure, and escalating costs, and now recommends a new project to again reconstruct the Nicollet Mall.

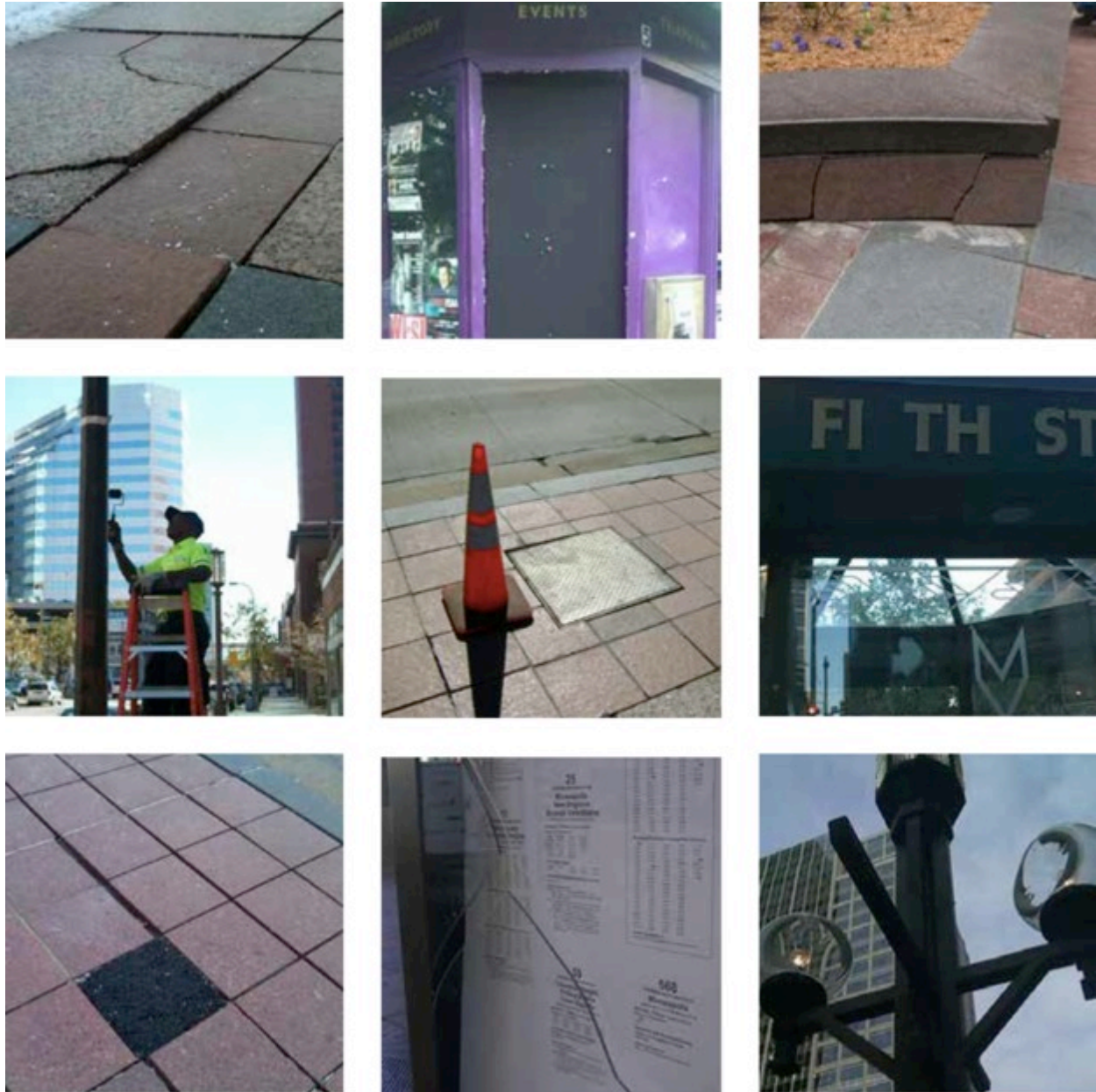


Figure 4. Maintenance Issues.

Currently, 140,000 employees a day travel from throughout much of Minnesota to work in the 34 million square feet of office space on or near Nicollet Mall. Major Fortune 500 companies including Target, Wells Fargo Bank, and US Bank are headquartered on Nicollet Mall and many other major businesses and companies also have offices on the Mall or nearby. These and other business leaders, through the MDC and its *Downtown 2025 Plan* (2012) and together with the City, have determined that it is time for Minnesota's most important business street to be rebuilt again.

Summary

Nicollet Mall was established and designed as a pedestrian and transit mall in 1965 and quickly became a national model of urban innovation. Over time Nicollet Mall became an increasingly important part of the City's transportation infrastructure, but it also grew from being an important business address to becoming the beating heart of the City's urban pedestrian street experience. A weekly farmer's market now operates on a large portion of Nicollet Mall in summer, outdoor dining has proliferated over the past decade, the Mall is home of the famous winter *Holidazzle* parade, and other parades and events are commonplace. At the same time, the experience of Nicollet Mall remains uneven, with numerous bars, restaurants, and retail outlets ensuring a vibrant pedestrian experience on some blocks while other blocks have ground floor uses that don't support this level of level of activity, creating multi-block dead zones. The physical appearance of Nicollet Mall grows increasingly worse and public safety may become compromised if the sidewalk pavement system isn't addressed.

While Nicollet Mall was ground breaking in its day, competitor regions have been investing in new innovative public spaces to recruit top talent and business so now it is time for Minnesota to be innovative again. Nicollet Mall is more than just a street – it is the outside world's window onto the state and the region and the place where business owners and investors get their first impression of Minnesota's potential for growth. More important, it is the region's most important public place and space. The purpose of this project is to create a consistently exciting and vibrant experience for the entire twelve blocks of Nicollet Mall that will attract residents, visitors, and businesses downtown while repositioning Nicollet Mall as Minnesota's Main Street for the 21st century.



Figure 5. Nicollet Mall in summer - the farmer's market during the day and outside dining at night.

THE PROJECT

Purpose

The City of Minneapolis and the Minneapolis Downtown Council formed the Nicollet Mall Implementation Committee in the Spring of 2013 for the purpose of working together to ensure the redesign and reconstruction of a first-class, 21st century Nicollet Mall in downtown Minneapolis. In order to best achieve this goal, the committee decided to implement a Design Competition to develop a new vision and concept design for the reconstruction of Nicollet Mall to ensure that it remains the leading center for business in the State of Minnesota. Once complete, the project will cement Nicollet Mall's position as the region's premiere business, transit, and entertainment connection – a spine that runs through downtown Minneapolis, connecting green spaces, shops, office towers, and catalyzing new investment and development.

The reconstructed Nicollet Mall will combine high-quality urban design with appropriate materials and systems to create a public space that is both beautiful and that will withstand heavy use and the Minnesota climate. The reconstructed Nicollet Mall will attract many more workers, residents, and guests to the center of downtown Minneapolis to work, shop, attend arts and sports events, and take part in the many recreation opportunities available, while an enhanced connection to the Mississippi riverfront will highlight our State's most famous natural amenity.

Scope, Schedule, and Budget

The reconstruction of Nicollet Mall is expected to cost between \$30M and \$40M and is expected to be funded with a combination of Minnesota State bond proceeds and assessments of surrounding property owners. The construction budget for the project is expected to be between \$21M and \$28M and will include the complete reconstruction of the street and sidewalks from building face to building face (an 80' right-of-way and a current street width of 24' from curb to curb), for the twelve blocks between Washington Avenue and Grant Street. Construction is expected to be complete by 2015-2016. Detailed design work through construction documents is expected to be a collaboration of the winning firm, the Minneapolis Department of Public Works engineering staff, and an appropriate engineering and planning firm, if different from the winning firm.

THE COMPETITION

Purpose

The City and MDC's purpose with this competition is to obtain alternative visions for a future Nicollet Mall and to inform the consultant selection process so that the City retains the best qualified design firm for the project. The competition process will culminate in the fall 2013 selection of a winning firm, which will be retained by the City to execute the detailed design for the Nicollet Mall reconstruction project. The winning firm will consolidate the best ideas from their own and the other submissions, if appropriate, into a single vision for Nicollet Mall. This vision will then be used to promote the Nicollet Mall reconstruction project generally; to obtain

consensus on assessments from the business community and property owners; and to obtain consensus from the community through a public participation process. Firms will be asked to consider the redesign of Nicollet Mall at several levels.

Design at Two Levels - Vision and Details

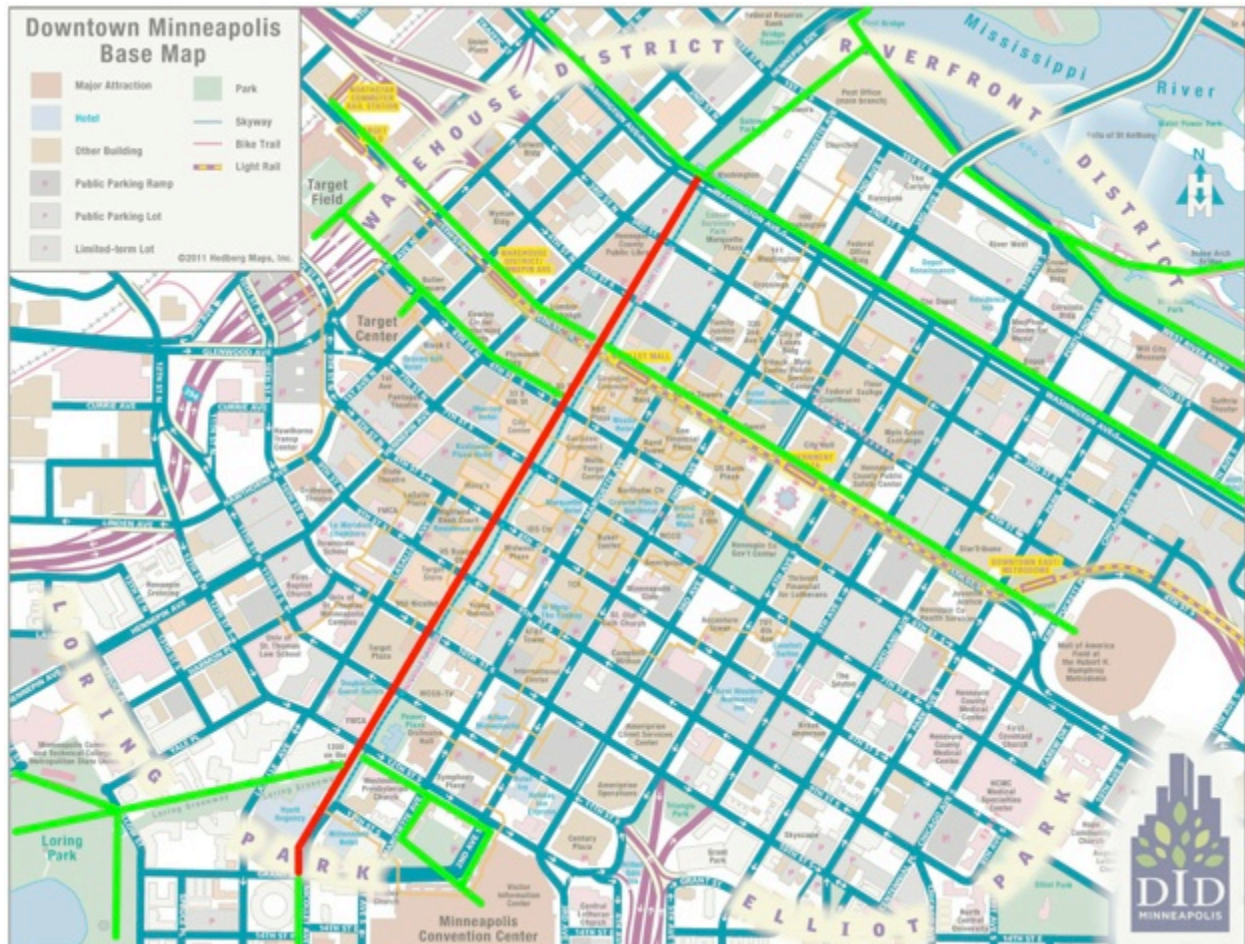


Figure 6. Scope of the Competition: Vision of connections in green; detailed design of Nicollet Mall in red.

Vision – Downtown Context and the Enhancement of One Connection or Linkage: Each firm will develop a plan or map that diagrammatically illustrates the role of Nicollet Mall as the spine in a larger system of connections and then focus on design ideas for the improvement of one linkage or connection from Nicollet Mall to one of the following areas or amenities:

- The Mississippi Riverfront, including pathways that incorporate grade adjustments and allow people to descend down to the river's edge and touch the water
- Northeast and Southeast Minneapolis via the Hennepin Bridge and the Stone Arch Bridge
- The riverfront neighborhoods of the North Loop Neighborhood Association and the Downtown Minneapolis Neighborhood Association, along Washington Ave.
- The Warehouse District business and entertainment area on 1st and 2nd Avenues N.

- The Hiawatha and Central Corridor (opening 2014) Light Rail Lines and the station stops along 5th Street
- Loring Greenway, Loring Park, the Walker Art Center, and the Loring and Kenwood Neighborhoods
- Peavey Plaza and Orchestra Hall
- The Minneapolis Convention Center
- Parks and green spaces including the proposed Gateway Park at 3rd and Nicollet
- Target Field and the Target Center Arena
- The proposed Minnesota Vikings Stadium and the Stadium District in Downtown East
- The proposed Nicollet-Central streetcar line running from 41st Ave. down Central Ave. in Northeast Minneapolis through downtown on Nicollet Mall to 46th street in South Minneapolis

Details – Design of a Typical Block: Each firm will choose one block of Nicollet Mall and develop a conceptual design that explores the following issues:

- Curb and gutter vs. a unified surface shared by everyone
- Enhancement of the pedestrian experience, year-round use, and improved connections to the skyway system
- Ideas for elegant yet durable systems and materials that reflect a pragmatic and economical approach to long-term operations and maintenance
- Ideas for non-stock innovations or inventions that would further the City’s objectives and goals for Nicollet Mall.

THE CONSULTANT SELECTION PROCESS

A **Two**-Stage Process

The City and MDC are seeking qualifications from multidisciplinary firms (or teams) with a track record of creativity, design excellence, problem solving skills, and the successful completion of similar complex urban redevelopment projects.

The City and MDC will be using a two-stage, qualifications-based selection process that will include this RFQ and a Design Competition that culminates in Final Presentations and Interviews, after which the winning firm will be selected.

For the purposes of these Qualifications and the Design Competition, the City is interested primarily in the key design team members, not the full team of consultants and sub-consultants that will be required to execute the full design contract (Schematic Design through Construction Administration). The city encourages lean teams, maximum creativity, and the use of resources on design, rather than the expenditure of time and resources on the creation of large teams and arrangements that will not be necessary at this stage of the process.

- Stage I: RFQ: Qualifications will be reviewed by an Implementation Committee comprised of City and MDC representatives. The purpose of the RFQ process will be to

finalize a short list of up to four qualified design firms that will be invited to participate in the Design Competition.

- Stage II: Design Competition: The City will issue the Design Competition Brief to the approved short list of qualified firms. Each firm will have approximately 8 weeks to complete and submit their design ideas for Nicollet Mall. The four firms will make a single, one-day visit to Minneapolis at the end of the competition to tour Nicollet Mall, meet with City staff, present their submissions publically, and interview with the Review Panel, which will include members of the Implementation Committee and the design community. The Minneapolis City Council will approve the winning firm based upon a final recommendation from the Review Panel. The final design submission will be in form of a brief PowerPoint slide show (20-30 slides) and will include four components:
 - The firm or team's previous work
 - Design ideas for one enhanced connection or linkage
 - Design ideas for one block of Nicollet Mall
 - Questions and suggestions for next stepsEach team will also submit a brief proposal for full design services including team and fee as % of construction cost
- Compensation: Each of the four selected qualified firms will receive a stipend of \$30,000 for participating in the Design Competition. Payment shall be made upon City receipt of the firm's completed design submission and proposal as required by the Design Stipend Agreement.
- Next Steps: The City intends to enter into a contract with the winner of the Design Competition for full design services related to the reconstruction project. However, based upon available funding, the City may also elect to proceed with Schematic Design phase services only, or may elect not to proceed with design services at all. In any case, the City is not under any obligation to enter into a contract with the winner of this design competition for partial or full design services related to the reconstruction project.

Qualifications Requirements

Firms are requested to submit concise qualifications that do not exceed twelve (12) facing pages of information (six pages if double-sided) excluding optional folder, binder, or covers. Qualifications will be standard 8-1/2"x11" format. Font size for text should be no smaller than 11 pt. Do not submit any additional collateral material such as books, magazines, or CD's – additional materials will be discarded. In your qualifications submission, include the following information:

- Introductory Letter: Cover letter (one page maximum) that includes general description of the firm, interest in this project, and the name and contact information for the team leader.
- Acceptance of Contract Form: Each firm that is invited to participate in the Design Competition will be required to enter into a Design Stipend Agreement with the City of Minneapolis in the form of Attachment “A”. In your introductory letter, clearly identify the firm that will serve as the legal entity that will be contracting with the City. Review the Design Stipend Agreement and include in your letter a sentence that states that you have read it and will accept its terms unconditionally, including the Standard Insurance Agreement Form attached to it and sign both forms upon being notified of being short-listed and invited to submit a Design Competition entry.
- Team Structure and Team Member Roles and Responsibilities: Explain the organization of your team, the roles and responsibilities of each key team member, and the unique contribution each individual will bring to this project (one page).
- Firm Background: Include firm background and business organization information for the lead firm, and for other firm(s) if submitting as a team (one page each maximum) including firm history, values, philosophy, principals, number of staff, awards, honors, and the firm’s approach to design and client service. If multiple firms working together as a team, specifically identify previous collaborations with other team members.
- Examples of Work: Provide three (3) examples of projects per team member (one page each, no more than five total if multiple team member firms) that demonstrate relevant experience, including the name of Client/Owner; name and brief description of project, including scope, schedule, budget, and completion date; and client References (name, email address, and telephone number) for Owner, Project Manager/Owner’s Representative, and General Contractor. In addition, provide summary project lists for each key team member.
- Design Team: Provide bios/resumes (one page maximum) for key personnel who will be leading the team and doing the design work on the competition. Include the following for each team member: Name, professional credentials, firm, title, role, years with the firm, experience with projects of this scope, scale, and quality, and previous collaborations.

Submission of Qualifications

- Due Date: Qualifications are due **Friday, May 31**, 2013, by 2:30 p.m.
- Number of Copies: Please provide an electronic version (PDF emailed to Ben Hecker at Ben.Hecker@minneapolismn.gov) and ten (10) hard copies of your qualifications. Qualifications received after the deadline will not be accepted. Deliver all copies to:

City of Minneapolis, Department of Public Works
350 South 5th Street, RM 203 City Hall
Minneapolis, MN 55415-1390
Attention: Ben Hecker

- Questions and Answers: Send questions to Ben Hecker via email (address above). FAQ's and answers will be posted on the city's project website: <http://www.minneapolismn.gov/nicolletmall>. Do not contact any other representatives of the City or the MDC prior to submitting your qualifications.
- Review of Qualifications and Selection of Short Listed Firms: The Implementation Committee comprised of City and MDC representatives will review the qualifications based on the selection criteria above and create a short list of four firms that will receive the Design Competition Brief. All qualifications submittals become the property of the City.

Key Milestones

- Mon., Apr. 29: RFQ posted to City's website and announced
- **Fri., May 31:** **Qualifications due at the City by 2:30 PM**
- Wed., Jun. 12: Shortlist Announced; Design Competition Brief issued
- Week of Jun. 24: Team visits/work sessions in Minneapolis
- Wed., Aug. 14: Competition submissions due at the City (8 Weeks)
- Week of Sep. 9: Public presentations, Interviews with Implementation Committee
- Week of Sep. 16: Implementation Committee selects winner
- Weeks of Sep. 9-30: Public display and review of designs
- Week of Sep. 30: City Council Approval of Winner

Selection Criteria

Qualifications received as a part of this RFQ process will be evaluated based upon the following criteria. The City and MDC may, at their discretion, expand or reduce the criteria upon which they base final decisions regarding selection of qualified firms for the short list.

- **EXPERIENCED URBAN DESIGNERS:** Experienced teams with experienced leaders who have worked together successfully on previous projects in the creation of excellent urban design for public streets, plazas, and spaces
- **CLIMATE APPROPRIATE:** Teams that have successfully completed projects in other winter cities that incorporate design features, materials, and finishes that remain attractive year round and support year round use

- **VISION AND DETAILS:** Teams that can demonstrate their ability to conceptualize a big vision and then consistently implement that vision down to the smallest details while remaining on schedule and on budget.
- **DESIGN FOR DURABILITY:** Teams with experience creating designs for streets and public spaces that balance aesthetics and material quality with ease of maintenance and repair, ensuring predictable and relatively low operations and maintenance budgets
- **TRANSIT EXPERIENCE:** Teams with experience designing public streets that accommodate multiple modes of transportation including pedestrians, cars, buses, rail transit, and bicycles
- **SCOPE, SCHEDULE, BUDGET:** Teams that are capable of balancing urban design, material quality, and budget
- **PUBLIC PROCESS:** Teams that can work with the City in managing a public participation process with many stakeholders who have different interests
- **GREEN AND SUSTAINABLE:** Teams with the knowledge and experience required to integrate the latest in design methods and technologies that will lead to a greener, lusher, and more sustainable environment and that will anticipate and adapt to climate change in the coming decades.
- **ACCESSIBILITY AND SAFETY:** Teams with experience designing environments that are accessible and safe, including familiarity with and use of ADA and the principles of Universal Design for accessibility and Crime Prevention Through Environmental Design (CPTED) principles for public safety.
- **MARKET-MOVING DESIGN:** Teams that can design to bring people to urban places, increase public use and event frequency, generate excitement, increase property values, and cause a transition over time towards appropriate ground floor uses and tenants for the full length of commercial streets

Additional Information and Resources

Links to a variety of online resources including maps, plans, reports, and other documents relevant to the project have been posted on the project website at:

<http://www.minneapolismn.gov/nicolletmall>

ATTACHMENT A

DESIGN STIPEND AGREEMENT

THIS AGREEMENT is made and entered into effective the ____ day of _____, 2013, by and between the **City Of Minneapolis**, a Minnesota municipal corporation (the “City”), and _____ (“Proposer”).

WHEREAS, on _____, 2013, the City issued a request for qualifications (“RFQ”) seeking qualified design teams to participate in a competition for urban design services for the redesign of Nicollet Mall in downtown Minneapolis; and

WHEREAS, Proposer submitted qualifications and was selected to participate in the design competition; and

WHEREAS, the Proposer would like to proceed to Phase Two and represents that it is qualified and authorized to perform the services described in this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **Deliverables.**

The Proposer agrees to submit to the City on or before _____, a Phase Two proposal meeting the requirements as described in the attached Exhibit A (the “Phase Two Proposal”).

2. **Stipend.**

Upon Proposer’s submission of a Phase Two Proposal in accordance with the terms of this Agreement and Proposer’s compliance with the requirements described herein, the City shall pay a stipend to the Proposer of \$30,000 to defray a portion of the costs of preparing the Phase Two Proposal. In no event shall the amount to be paid to Proposer under this Agreement exceed \$30,000. The City will monitor the performance of the Proposer against the standards required in Exhibit A and as otherwise described herein. Substandard performance as determined by the City will constitute non-compliance with this Agreement.

3. **Ownership of Documents.**

All documents and data resulting from this Agreement including Proposer’s Phase Two Proposal shall become the property of the City. Notwithstanding the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended (the “Data Practices Act”), the City may use, extend, or enlarge any document produced under this Agreement at any time without the consent of, permission of, or further compensation to the Proposer, provided, however, that the Proposer shall not assume any responsibility or liability for any such use, extension, or enlargement of any such document unless Proposer has certified such use, extension, or enlargement. The

Proposer hereby consents to the release of its Phase Two Proposal and waives any claims it may have under Minnesota Statutes Section 13.08 against the City for making such information public.

4. **Intellectual Property.**

Unless the Proposer is subject to one or more of the intellectual property provisions below, the City shall own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any "Work" created, in progress, produced or completed and paid by the Contract. Work covered includes inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under the Contract will be the property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of the Contract. The Proposer represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

The City shall possess and own any Public Artwork provided by the Proposer. The Proposer retains all other rights provided through the Copyright Act of 1976, 17 U.S.C. Section 101 et seq. to such Public Artwork. The Proposer shall waive its rights under the Visual Artists Rights Act of 1990, if any.

Since the artistic designs leading up to and including the final design and dimension of any Public Artwork are unique, the Proposer shall not make any additional, exact duplicate reproductions of the final design and dimension, nor shall the Proposer grant to a third party the right to replicate the artistic designs and dimensions of such Public Artwork without the written permission of the City.

The Proposer grants to the City and its successors or assigns an irrevocable license to make two-dimensional reproductions of any Public Artwork and the final designs to be used in brochures, media, publicity and catalogs or other similar, nonprofit publications.

The Public Artwork and designs developed under this Contract shall be the exclusive property of the City and will be surrendered by Proposer upon the completion of the Public Artwork or upon the cancellation, termination or expiration of the Contract.

Notwithstanding the foregoing, the City will make good faith efforts to credit the respective design team during any public exhibition of the submissions.

5. **Personnel.**

- a. The Proposer represents that it has engaged or will engage, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
- b. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties.

6. **Hold Harmless.**

As and from the date hereof, the Proposer agrees to defend, indemnify and hold the City harmless from any and all claims or lawsuits that may arise from the Proposer's activities during or after the term of this Agreement with the City under the provisions of the Agreement, that are attributable to the negligent or otherwise wrongful acts or omissions, including breach of specific contractual duties of the Proposer or the Proposer's independent contractors, agents, employees or officers.

Nothing herein shall be construed to obligate the Proposer to protect, indemnify and save the City, its officer and employees from and against liabilities, losses, damages, costs, expenses, (including attorney's fees), causes of action, suits, claims, demands and judgments arising from or by reason of grossly negligent or intentional wrongful acts or omissions or fraudulent acts of the City or any of its agents, employees or officers. This Section 6 shall survive termination of this Agreement.

7. **Equal Employment Opportunity and Discrimination.**

The Proposer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status, status with regard to public assistance or status as a disabled veteran or veteran of the Vietnam era or to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; selection for training, including apprenticeship. The Proposer shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth the provisions of this nondiscrimination clause. In addition, the Proposer will, in all solicitation or advertisements for employees placed by or on behalf of the Proposer, state that all qualified applicants will receive consideration for employment without regard to their race, color, creed, religion, ancestry, sex, national origin, affectional preference, status as a disabled veteran or veteran of the Vietnam era, and comply in all other aspects with requirements of the Minneapolis Code, Chapter 139.

8. **Termination.**

This Agreement shall be in full force and effect from _____, 20__ through _____, 20__ unless otherwise extended or terminated by the City.

9. **Conflict of Interest/Code of Ethics.**

The Proposer agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in this Agreement.

10. **Independent Contractor.**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Proposer shall at all times remain an independent contractor with respect to the activities to be performed under this Agreement. Any and all employees of Proposer or other persons engaged in the performance of any work or activities contemplated by Proposer under this Agreement shall be considered employees or sub-contractors of the Proposer only and not of the City; and any and all claims that might arise, including Workers' Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or other activities to be rendered herein, shall be the sole obligation and responsibility of Proposer.

11. **Assignability.**

The Proposer shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City thereto; provided, however, that claims for money due or to become due to the Proposer from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

12. **Consent to Informal Proposer Information Process.**

The Proposer acknowledges that prior to execution of this Agreement, the City has provided the Proposer with its Design Brief to assist all proposers in developing their Phase Two Proposals. The City welcomes questions from all Phase Two proposers and will make reasonable efforts to provide information as requested by the Phase Two proposers at any time prior to the submittal date for Phase Two Proposals. The City expects that each Phase Two proposer will be on its own with respect to seeking information that might be helpful in preparation of its Phase Two Proposal. The City will not ensure that information provided to one proposer resulting from such proposer's inquiry is necessarily distributed to all Phase Two proposers. The Proposer hereby consents to the foregoing informal proposer information process and waives any claims it may have against the City for failing to provide information to all proposers equally.

13. **Insurance.**

The Proposer shall maintain the insurance, if any, as identified in Exhibit B, which is attached and made part of this Agreement.

14. **Notices.**

A notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by mail, postage prepaid, return receipt requested, or delivered personally; and

- a. In the case of the Proposer, is addressed or delivered personally to:

- b. In the case of the City, is addressed or delivered personally to:

City of Minneapolis
Department of Public Works
350 South Fifth Street, Room 203
Minneapolis, MN 55415-1390
Attention: Ben Hecker

or at such other address with respect to either party as that party may designate in writing and forward to the other provided in this Section 11.

15. **Billboard Advertising.**

Through ordinance codified at Section 544.120, Minneapolis Code of Ordinances prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

16. **Governing Law.**

This Agreement is to be construed and enforced according to and governed by the laws of the State of Minnesota.

17. **Counterparts.**

This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original.

18. **Retention of Records.**

The Proposer shall retain all records pertinent to the Agreement for a period of six years after the resolution of all audit findings.

19. **Inspection of Records.**

The Proposer agrees that the City or any of its duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, and records that are relevant and involve transactions relating to this Agreement.

20. **Data Practices.**

The Proposer agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Proposer must immediately report to the City any requests from third parties for information relating to the Agreement. The City agrees to promptly respond to inquiries from the Proposer concerning data requests. The Proposer agrees to hold the City, its officers, and employees harmless from any claims resulting from the Proposer's unlawful disclosure or use of data protected under state laws.

21. **Entire Agreement.**

This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer or agent of any party shall be binding, unless it is in writing and signed by all the parties to this Agreement.

(Signature pages follow.)

IN FURTHERANCE WHEREOF, the City and Proposer have executed this Agreement effective as of the date first written above.

PROPOSER

(Proposer's signature page to Design Stipend Agreement)

CITY OF MINNEAPOLIS

By: _____

Its: Finance Officer
Enterprise Contract Administrator
City Purchasing Agent

Responsible Department Head:

Steven Kotke, Director of Public Works

Approved as to form:

Assistant City Attorney

(City's signature page to Design Stipend Agreement)

EXHIBIT A

INSURANCE REQUIREMENTS

Exhibit A- Standard Agreement Insurance Form (Grant funded and Non-Grant funded)

The following are the insurance requirements for the Contractor. Please fill in a-e. Contractor shall **check one box under each insurance area and sign at the bottom**. Please note: **No changes or additions can be made to this form** other than indicating self-insurance status (if applicable, also attach a letter that outlines self-insurance coverage).

- a) 1. Worker's Compensation insurance that meets the statutory obligations.
☐ **Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**
☐ **MN Statute Chapter 176 does not apply because Contractor has no employees and will not have any during the life of the Contract.**
2. Workers Compensation insurance for non-employees providing services under this Contract (i.e., subcontractors). **Contractors are assuming full Workers Compensation coverage for uninsured sub-contractors.**
☐ **Attached is certificate evidencing Workers Compensation insurance coverage in force as of the Contract start date (either umbrella coverage by Contractor or separate coverage by non-employees).**
☐ **Non-employees such as subcontractors will not provide any services under this Contract.**
- b) Commercial General Liability insurance. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.
☐ **Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**
☐ **Contractor assumes full responsibility for any and all damages that occur as a result of this Contract.**
- c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles.
☐ **Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**
☐ **Contractor's personal auto liability insurance coverage addresses the risk. Attached is a letter from insurance agent stating that personal automobile insurance policy covers business usage of all automobile(s) that will be used during the life of this Contract.**
☐ **Contractor will not drive any automobiles while performing services under this Contract.**
- d) Professional Liability Insurance providing coverage for the claims that arise from the errors of Contractor or its consultants, omissions of Contractor or its consultants, failure to render a professional service by Contractor or its consultants, or the negligent rendering of the professional service by Contractor or its consultants. The insurance policy must provide the protection stated for two years after completion of work.
☐ **Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**
☐ **Contractors providing service under this Contract who do not carry professional liability insurance agree to assume full responsibility for any and all damages that occur as a result of Contractor's acts, errors or omissions.**
- e) Computer Security and Privacy Liability Insurance providing coverage for the claims that arise from the disclosure of private data and security breaches. The insurance policy must provide the protection stated for Three (3) years after completion of work.
☐ **Attached is certificate evidencing above insurance coverage in force as of the Contract start date.**
☐ **Contractors providing service under this Contract who do not carry computer security and privacy liability insurance agree to assume full responsibility for any and all damages that occur as a result of Contractor's acts, errors or omissions.**

Contractor Name (printed) _____

Contractor Authorized Signature _____ Date _____

EXHIBIT B

DRAFT LANGUAGE – THE CITY RESERVES THE RIGHT TO MODIFY PRIOR TO EXECUTION OF THE DESIGN STIPEND AGREEMENT

REQUIREMENTS OF THE PHASE TWO PROPOSAL INCLUDE:

1. DESIGN

a. Vision

- i. Vision for the area showing one enhanced connection to Nicollet Mall

b. Design

- i. Concept Design for one block of Nicollet Mall
- ii. Indication of spatial character, use, programming, combination of transit systems, and major materials, systems, products, street furniture, public art, and other physical features
- iii. To-scale solutions for integration of basic geometries and technical requirements of the proposed transit systems

c. Narrative

- i. Submit a brief and concise narrative describing the vision, design, and approach to capital, operating, and total costs of ownership

2. PROPOSAL FOR FULL DESIGN SERVICES

a. Fee Proposal

- i. Fee Proposal for Full Design Services (Schematic Design through Construction Administration) based on a percentage of construction cost
- ii. Fee broken down by phase and discipline
- iii. Miscellaneous fees and costs including specialty subconsultants

b. Proposed Project Team

- i. Provide the same type of information required in the RFQ for the project team that you propose to use for full design services including additional firms, key individuals, and specialty subconsultants

The following general conditions will apply to the Contract for Design Services with the winner of the design competition.

General Conditions for Request For Proposals (RFP)

The General Conditions are terms and conditions that the City expects all of its Contractors to meet. The City reserves the right to modify or expand these conditions at any time prior to execution of a contract for design services with the winner of the Design Competition. The proposer may suggest alternative language to any section. Some negotiation is possible to accommodate the proposer's suggestions.

1. City's Rights

The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in the Request for Proposal, or the respondent's reply based on the component prices submitted.

2. Interest of Members of City

The Contractor agrees that it has complied with Minnesota Statutes, Section 471.87 and Chapter 3, Section 22 of the City Charter. Therefore unless authorized in Chapter 15 of the City's Code of Ordinances, no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

3. Equal Opportunity Statement

Contractor agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363A, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

4. Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation

and selection for training, including apprenticeship.

If required by the City, the Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam eras, 1991 Gulf and current Afghanistan and Iraq wars, and comply in all other aspects with the requirements of the Minneapolis Code of Ordinances, Chapter 139.

5. Disability Compliance Requirements

All Contractors hired by the City of Minneapolis are required to abide by the regulations of the U.S. Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Contractors associated with the City to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination. The above requirements also apply to the Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract, this Contract may be canceled, terminated, or suspended, in whole or part, and the Contractor may be declared ineligible by the Minneapolis City Council from any further participation in City Contracts in addition to other remedies as provided by law.

6. Insurance

Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract. The Contractor and its sub-contractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. Amount of coverage will be automatically increased if the project amount is expected to exceed \$2,000,000 or involves potentially high risk activity.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions insurance providing coverage for 1) the claims that arise from the errors or omissions of the Contractor or its sub-contractors and 2) the negligence or failure to render a professional service by the Contractor or its sub-contractors. The insurance policy should provide coverage in the amount of \$2,000,000 each occurrence and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.
- e) **Computer Security and Privacy Liability** for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Media Liability. Insurance will provide coverage against claims that arise from the disclosure of private information from files including but not limited to: 1) Intentional, fraudulent or criminal acts of the Contractor, its agents or employees. 2) Breach of the City's private data, whether electronic or otherwise. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must remain in continuous effect for at least 3 years after the service is provided or include a 3 year extended reporting period.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Contractor shall require any of its subcontractors, if sub-contracting is allowable under this Contract, to comply with these provisions, or the Contractor will assume full liability of the subcontractors.

7. Hold Harmless

The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including reasonable attorney's fees, resulting directly or indirectly from any negligent act or omission of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the work or services provided by or through this Contract or by reason of the failure of the Contractor to fully perform, in any respect, any of its obligations under this Contract. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statutes, section 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The provisions of Minnesota Statutes, Chapter 466 shall apply to other political subdivisions of the State of Minnesota.

8. Subcontracting

The Contractor shall provide written notice to the City and obtain the City's authorization to sub-contract any work or services to be provided to the City pursuant to this Agreement. As required by Minnesota Statutes, Section 471.425, the Contractor shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Contractor has received payment from the City.

9. Assignment or Transfer of Interest

The Contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the Contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City. The Contractor shall not subcontract any services under this Contract without prior written approval of the City Department Contract Manager designated herein.

10. General Compliance

The Contractor agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under the Contract.

11. Performance Monitoring

The City will monitor the performance of the Contractor against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Contractor within a reasonable period of time after being notified by the City,

Contract termination procedures will be initiated. All work submitted by Contractor shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Contractor and shall inform the Contractor of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

12. Prior Uncured Defaults

Pursuant to Chapter 8, Section 24 of the City's Charter, the City may not contract with persons or entities that have defaulted under a previous contract or agreement with the City and have failed to cure the default.

13. Independent Contractor

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent contractor with respect to the work and/or services to be performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Contract shall be considered employees or sub-contractors of the Contractor only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of Contractor.

14. Accounting Standards

The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

15. Retention of Records

The Contractor shall retain all records pertinent to expenditures incurred under this Contract in a legible form for a period of six years after the resolution of all audit findings, with the exception that such records shall be kept for a period of ten years after both the terms of a monitoring agreement have been fulfilled and all audit findings have been resolved for abatement programs. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

16. Data Practices

The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.

All Proposals shall be treated as non-public information until the Proposals are opened for review by the City. At that time, the names of the responders become public data. All other data is private or non-public until the City has completed negotiating the Contract with the selected Contractor. At that time, the Proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and as such are open for public review.

17. Inspection of Records

All Contractor records with respect to any matters covered by this Contract shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

18. Living Wage Ordinance

The Contractor may be required to comply with the "Minneapolis Living Wage and Responsible Public Spending Ordinance" Chapter 38 of the City's Code of Ordinances (the "Ordinance") (http://www.minneapolismn.gov/www/groups/public/@finance/documents/web_content/convert_255695.pdf). Unless otherwise exempt from the ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance's requirement that the Contractor and its sub-contractors pay their employees a "living wage" as defined and provided for in the Ordinance.

19. Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of

Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Contractor.

20. Conflict and Priority

In the event that a conflict is found between provisions in this Contract, the Contractor's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

21. Travel

If travel by the Contractor is allowable and approved for this Contract, then Contractor travel expenses must be reimbursed in accordance with the *Contractor Travel Reimbursement Conditions*, which can be found at: http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/convert_282125.pdf

22. Billboard Advertising

City Code of Ordinance 544.120, prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

23. Conflict of Interest/Code of Ethics

By signing this Contract, the Contractor agrees that it will not represent any other party or other client which may create a conflict of interest in its representation with the City. If the Contractor is unclear if a conflict of interest exists, the Contractor will immediately contact the City representative identified as the Contract manager in this contract and ask for an interpretation.

In so far as it relates to its relationship with the City created by this Contract, the Contractor agrees to comply with the City's Code of Ethics, as codified at Minneapolis City Code of Ordinances, Title 2, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Contract have also complied with Title 2, Chapter 15 of that Ordinance as it related to their relationships between the City and the Contractor created by this Contract. Compliance with the Code of Ethics by the Contractor will be in its potential role as an "interested person", "lobbyist" or "lobbyist principal" and not as a "local official" or "local employee" (except to the extent that a Contractor representative or member of its board of directors is already a City official or employee). It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Contract. All questions relative to this section shall be referred to the City and shall be promptly answered.

24. Termination

The City may cancel this Contract for any reason without cause upon thirty (30) days written notice. Both the City and the contractor may terminate this Contract if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days written notice has been provided. If termination shall be without cause, the City shall pay Contractor all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Contractor, the City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Contractor under this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Contractor. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

25. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Contractor.

26. Intellectual Property

Unless the Contractor is subject to one or more of the intellectual property provisions in the paragraphs below, the City own all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any "Work" created, in progress, produced or completed and paid by this Contract. Work covered includes

inventions, improvements, discoveries, databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work produced by the Contractor under this Contract will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. The Contractor represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the terms of this Contract. This contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

27. Equal Benefits Ordinance

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each contractor and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at

http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_261694.pdf

It is the Contractor's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

28. Cardholder Data and Security Standards

Should the Contractor collect revenue on behalf of the City through the acceptance of credit cards offered by cardholders to pay for services offered

under the terms of this Contract, then Contractor represents and acknowledges that the Contractor will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). Contractor represents that it will protect cardholder data. Contractor will be annually certified as a PCI compliant service provider and agrees to provide evidence of said certification to the City upon request. Contractor agrees at reasonable times to provide to the City or to its assigns, the audit rights contained herein for all physical locations, systems or networks that process credit cards on behalf of the City. Contractor also agrees to provide written notice to the City of any breach of a system owned, operated or maintained by the Contractor that contains cardholder data or information.

29. Small & Underutilized Business Program (SUBP) Requirements **MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS**

Small and Underutilized Business Enterprise Program (SUBP)

SPECIAL PROVISIONS FOR REQUEST FOR PROPOSAL, OR ANY PART OR COMBINATION THEREOF, IN EXCESS OF \$100,000

I. PURPOSE

These provisions explain the City of Minneapolis Small and Underutilized Business Enterprise Program (SUBP) requirements applicable to this contract, the process the Minneapolis Department of Civil Rights (MDCR) will follow to evaluate proposer's efforts to obtain SUBP participation, the standards MDCR will use to measure compliance with these requirements, and the sanctions that may result from noncompliance with these requirements.

II. POLICY

It is the policy of the City of Minneapolis to provide equal opportunities to all contractors, and to redress the discrimination in the city's marketplace and in public contracting against minority-owned business enterprises (MBEs) and women-owned business enterprises (WBEs). The City of Minneapolis shall set contract goals for the participation of Minnesota Uniform Certification Program (MnUCP) certified MBEs and WBEs in the marketplace based upon their qualifications and availability. Firms certified by the MnUCP can be found at <http://mnucp.metc.state.mn.us/>. The city's marketplace includes the geographical area of the Minnesota counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright. Only firms in these counties will be counted towards meeting SUBP goals.

III. SUBP GOALS ON THIS PROJECT

Each proposer must either meet the goals listed below or show that it made every necessary and reasonable effort to meet the M/WBE goals prior to submitting the RFP. MDCR shall determine whether a proposer has made adequate good faith efforts to meet the SUBP goals. If a proposer fails to meet the project goals and does not demonstrate good faith efforts, the proposal may be rejected and the proposer may not be awarded the contract.

The goals on this project are: 15% of the architectural and engineering firm contract dollars are to be awarded to MnUCP-certified MBEs and/or WBEs.

IV. REQUIRED DOCUMENTATION AND SUBMITTAL OF INFORMATION

All proposers must make every necessary and reasonable effort to subcontract with MBEs/WBEs prior to submitting the RFP to the City of Minneapolis. All proposers must thoroughly document their efforts to solicit and incorporate M/WBE participation in order to meet the SUBP goals.

All proposers must submit with their RFP a completed Contract SUBP Participation Form, listing the MBEs and WBEs they intend to contract with and the respective subcontract amounts.

If the Contract SUBP Participation Form demonstrates, and MDCR has verified, sufficient M/WBE participation to meet the SUBP goals, the preliminarily selected proposer must submit the following within three (3) business days of receiving from MDCR notification of the preliminary selection:

Proposers List. The Proposers List must include all M/WBE and non-M/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a RFP or quote for the project. It also indicates which firms the preliminarily selected proposers propose to use.

If the Contract SUBP Participation Form does not demonstrate, or MDCR could not verify, sufficient M/WBE participation to meet the SUBP goals, the preliminarily selected proposer must submit, within three (3) business days of receiving from MDCR notification of the preliminary selection, documentation demonstrating that the proposer made sufficient good faith efforts to meet the goals. The documentation must include the following:

1. *Proposers List.* The Proposers List must include all M/WBE and non-M/WBE subcontractors, sub-consultants, service providers or suppliers that submitted a RFP or quote for the project. It also indicates which M/WBE firms the preliminarily selected proposer proposes to use.
2. *Certificate of Good Faith Efforts.* The Certificate of Good Faith Efforts must list all M/WBE and non-M/WBE firms (including all subcontractors, sub-consultants, service providers, and suppliers) from which the preliminarily selected proposer solicited RFPs or quotes for the project.
3. *Good Faith Efforts Affidavit.* The Good Faith Affidavit is a notarized document certifying the truth and accuracy of the information contained in the Certificate of Good Faith Efforts.
4. *Supporting Documentation to Demonstrate Good Faith Efforts.* The preliminarily selected proposer must submit information that demonstrates its efforts to achieve the SUBP goals. The documentation must identify the actions taken to achieve the SUBP goals, including those listed in the section below entitled, “Good Faith Efforts Evaluation Where Goal Not Met.” The information may include, but is not limited to, copies of solicitation letters, actual RFPs received, faxes, phone conversations, and emails to M/WBE firms.

V. FAILURE TO SUBMIT INFORMATION.

A proposer that fails to submit the required information by the due date will be deemed nonresponsive and the City of Minneapolis may reject the Proposal.

VI. IDENTIFYING THE LEVEL OF MBE AND WBE PARTICIPATION

MDCR determines whether a Contract has met City goals by dividing the dollar amount listed for each M/WBE by the Proposal's total dollar amount. If the total dollar amount of M/WBE participation does not meet established W/MBE goals, MDCR will determine the Contractor has not met the established W/MBE goals. Upon a determination that goals have not been met, MDCR conducts a Good Faith Efforts review (*see section VIII GOOD FAITH EFFORTS below*).

MDCR will utilize the following guidelines in determining the percentage of eligible business participation that will be counted toward the project goal:

- a) If a business is not an MBE or WBE at the time of the execution of the contract, M/WBE it will not be counted towards City M/WBE goals.
- b) If a subcontractor has ceased to be an MBE or WBE, as defined by Minneapolis Code of Ordinances, Chapter 423, it will not be counted toward the project goal.
- c) When an MBE or WBE participates in a contract, the value of the work actually performed will be counted as follows:
 - 1) The entire amount of that portion of a construction contract that is performed by the MBE's/WBE's own forces, including the cost of supplies and materials utilized by the M/WBE for the work of the contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime M/WBE contractor or its affiliate).
 - 2) The entire amount of fees or commissions charged by the M/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract toward M/WBE project goals, provided that MDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 3) When an M/WBE subcontracts part of the work of its contract to another business, the value of the subcontract work may be counted toward M/WBE project goals only if the MBE's/WBE's subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-MBE/non-WBE will not count toward M/WBE project goals.
- d) When an M/WBEM/WBE performs as a participant in a joint venture, the city will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBEM/WBE performs with its own forces toward M/WBEM/WBE project goals.

VII. COMMERCIALY USEFUL FUNCTION

MDCR will count expenditures of an M/WBEM/WBE toward M/WBEM/WBE project goals only if the M/WBEM/WBE is performing a commercially useful function on that contract:

- 1) An M/WBEM/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBEM/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To determine whether an M/WBEM/WBE is performing a commercially useful function, MDCR may evaluate the amount of work subcontracted, industry practices, whether the amount the M/WBEM/WBE is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- 2) An M/WBEM/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of M/WBEM/WBE participation. In determining whether an M/WBE is such an extra participant, MDCR may examine similar transactions, particularly those in which MBEs and WBEs do not participate, and other relevant factors.
- 3) If an M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the M/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MDCR may presume that it is not performing a commercially useful function.
- 4) When an M/WBE is presumed not to be performing a commercially useful function, the M/WBE may present evidence to rebut this presumption. MDCR may determine that the business is performing a commercially useful function given the type of work involved and normal industry practices, and other relevant factors.

VIII. GOOD FAITH EFFORTS EVALUATION WHERE GOAL NOT MET

If a Contractor has not met the project M/WBE goals, MDCR conducts a good faith efforts review to determine whether the Contractor has made every reasonable and necessary effort to solicit M/WBEs. Per the SUBP Ordinance, Chapter 423.90(b), MDCR utilizes the following factors to evaluate good faith efforts:

- 1) Soliciting through all reasonable and available means (attendance at pre-Proposal meetings, advertising and/or written notices) the interest of all MBEs/WBEs certified in the scopes of work of the contract. The proposer must solicit MBEs/WBEs in sufficient time prior to Proposal opening or the proposal deadline to allow MBEs/WBEs to respond to solicitations. The proposer must determine with reasonable certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up on initial solicitations.
- 2) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work into smaller units to facilitate M/WBE participation, even when a contractor might otherwise prefer to perform these work items with its own forces.

- 3) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- 4) The proposer must negotiate in good faith with interested MBEs/WBEs and provide written documentation of such negotiation with each such business. In determining whether the proposer negotiated in good faith, the Department may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- 5) The fact that there may be some additional costs involved in finding and using MBEs/WBEs is not itself sufficient reason for a proposer's failure to meet the project goals as long as such costs are reasonable.
- 6) If requested by a solicited M/WBE, the proposer must make reasonable efforts to assist such MBEs/WBEs in obtaining bonding, lines of credit or insurance as required by the city or by the proposer, provided that the proposer need not provide financial assistance toward this effort.
- 7) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of MBEs/WBEs.

IX. POST-AWARD SUBSTITUTIONS

A contractor shall not substitute any subcontractor listed in the proposal without the prior written approval of MDCR. A substitution includes having someone or some entity other than the subcontractor listed in the Proposal or proposals perform the work of that subcontractor. A substitution is not allowed until both of the following occur: MDCR receives a written request for approval of the substitution, including the reasons for the substitution; and MDCR issues a written approval of the substitution.

The contractor must make good faith efforts to replace an M/WBE subcontractor that is unable to perform successfully with another M/WBE to perform the same scope of work. The contractor may request assistance from MDCR staff in replacing an M/WBE. Such assistance may include, but is not limited to, providing the contractor with information regarding the identification and availability of other M/WBEs.

X. PENALTIES FOR NONCOMPLIANCE WITH THESE SUBP SPECIAL PROVISIONS

Compliance with the requirements of these SUBP Special Provisions is a material condition of performance of the contract, and failure to comply with these SUBP Special Provisions shall be deemed a breach of the contract. If a developer, contractor, subcontractor, supplier, vendor or subrecipient does not make a good faith effort to fulfill its obligations under Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, or fails to materially comply with the provisions of Minneapolis Code of Ordinances, Chapter 423 and these SUBP Special Provisions, the City of Minneapolis may take the following actions wholly, partly, or in any combination:

- a) Temporarily withhold cash payments pending correction of the deficiency.
- b) Disallow the use of funds for all or part of the cost of the activity or action not in compliance.
- c) Suspend or debar the developer, contractor, subcontractor, supplier, vendor or subrecipient as ineligible for all current or potential contracts.
- d) Designate the developer, contractor, subcontractor, supplier, vendor or subrecipient as high-risk for future contracts and require of the developer, contractor, subcontractor, supplier, vendor or subrecipient increased reporting requirements, mandatory audits and similar measures.



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**

Contract SUBP Participation Form

Please list all minority- or women-owned business enterprises that are included in this RFP.

The undersigned Contractor certifies that the amounts stated below for Minority- and Women-Owned Business Enterprise (MBE/WBE) commitment are included in the total RFP value and that the full utilization of the MBE/WBE's as listed or otherwise indicated herein is a condition of the Contract.
USE ADDITIONAL COPIES OF THIS FORM IF NECESSARY.

MBE/WBE Name	Address, Phone Number & Contact Person	Description of Work or Service to be provided	MBE Amount*	WBE Amount*

*Please Note: Any labor that an MBE/WBE subs out to a non-MBE/WBE will **not** count toward the SUBP goals, nor will the participation of any MBE/WBE not performing a commercially useful function on the project.

TOTAL

\$ _____	\$ _____
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By: _____ Signature: _____ Title: _____ Date: _____

**THIS FORM MUST BE COMPLETED, SIGNED AND SUBMITTED WITH
YOUR RFP. FAILURE TO DO SO MAY DEEM YOUR RFP AS NON-
RESPONSIVE.**

Page ____ of ____



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**

Proposer's LIST

The information on this form may be provided in an approved alternate format.

Project Name: _____

Prime Contractor _____

MBE Commitment % _____ WBE Commitment % _____

List all comparative quotes of participants performing on the project and participants that RFP, including MBE's, WBE's and Non-MBE's and WBE's.
Include Subcontractors, Suppliers, Sub-Consultants & Service Providers (Including Trucking).

Name, Contact Name and Phone number of Contractor	Check (✓) Firms That Will Be Used	<u>Description of Work</u>	Dollar Amount of Subcontract/Quote
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

Please indicate with a check mark (✓) which subcontractors, suppliers, sub-consultants & service providers you will be using on the project.
(Make additional copies of this form as necessary.)



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS
CERTIFICATE OF GOOD FAITH EFFORTS**

Project Name _____

Prime Contractor _____

LIST SOLICITATION OF ALL SUBCONTRACTORS, SUB-CONSULTANTS, SUPPLIERS, AND SERVICE PROVIDERS
(Include all MBEs, WBEs, and others solicited)

Subcontractor/Supplier/Service Provider and Address	MBE	WBE	Telephone #	Dates, Method of Contact					Description of Work or Service to be Provided	Dollar Amount of Contract
				Date	Letter	Fax	Phone	*Other		
1.										
2.										
3.										
4.										
5.										
6.										
7.										
8.										
9.										
10.										

* Please indicate how subcontractors, suppliers, sub-consultants & service providers were contacted for a quote on this project: _____.

(Make additional copies of this form as necessary)



**CITY OF MINNEAPOLIS
DEPARTMENT OF CIVIL RIGHTS**

GOOD FAITH EFFORTS AFFIDAVIT

STATE OF _____)
)SS
COUNTY OF _____)

I, _____, being first duly sworn, state as
(Full Name)

follows:

1. I am the _____ of _____
(Title) (Name of Individual, Company, Partnership, or Corporation)

that has been identified as the apparent proposer preliminarily selected for the City of Minneapolis Project/Contract:

(Project or Contract Name)

2. I have the authority to make this affidavit for and on behalf of the apparent proposer preliminarily selected by the City of Minneapolis.

3. The information provided in the attached Certificate of Good Faith Efforts is true and accurate to the best of my belief.

Signed _____
(Proposer or authorized representative)

Subscribed and sworn to before me

This _____ day of _____, 20____

(Notary Public)

My commission expires _____, 20____